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BOOKER v. DONOHUE.—Decided at Richmond, December 2, 1897.

Keith, P:

1. PLEADING—*Counts in tort and upon contract in same declaration*—*Action to recover fees of de facto officer*. Counts in tort and upon contract cannot be combined in the same declaration, but a count which simply sets out the details of an intrusion into an office, and claims of a *de facto* officer the emoluments of an office which have been illegally collected by him, and avers an *indebitatus assumpsit* to the *de jure* officer, cannot be said to be a count in tort.

2. PLEADING—*Assumpsit—Declaration—Account*. The bill of particulars, or account, required to be filed with a declaration in assumpsit is no part of the declaration.

3. PLEADING—*Assumpsit—Action to recover emoluments of office—De jure officer—Taking oaths and giving bond—Case at bar—Measure of damages*. Assumpsit is the proper remedy for the recovery by a *de jure* officer of the emoluments of the office illegally collected by a *de facto* officer. A *de jure* officer is entitled to the emoluments of the office of which he has been deprived from the date on which he was entitled to enter upon the discharge of the duties of the office, and it is not necessary as a condition precedent to his right of recovery that he should have qualified himself to discharge the duties of the office by taking the oaths and giving the bond required by law. In the case at bar, the measure of damages of the plaintiff, who was deprived of the office of clerk of the county court, if he proves the case set forth in the declaration, is so much of the *ex-officio* allowance to the clerk as was collected by the defendant, and the amount of fees received by him as such clerk, less the necessary expense of earning them, unless the defendant was guilty of fraud in procuring the certificate of election, in which event, no deduction should be allowed.

RICHMOND UNION PASSENGER RAILWAY COMPANY v. NEW YORK & SEA BEACH RAILWAY COMPANY.—Decided at Richmond, December 2, 1897.

Keith, P. Absent, Cardwell, J:

1. PROCESS—*Service on corporation which has ceased to exist*. Service of process on the late president of a corporation which has ceased to exist is sufficient though the process might have been served by publication as prescribed by section 1103 of the Code. The latter method is simply cumulative.

2. PLEADING—*General issue—Special pleas*. It is not error to refuse to allow special pleas to be filed which set up no defences except such as can be presented under the general issue.

3. PRINCIPAL AND AGENT—*Ratification of act of unauthorized agent*. The act of an unauthorized agent, subsequently ratified by the principal, is as binding as though previously authorized.

4. EVIDENCE—*To whom credit extended—Plaintiff's book of original entry*. Where a defendant denies liability on a contract, of which he has accepted the benefit, on the ground that credit was not extended to him, but to his alleged agent, the books of original entry of the plaintiff are admissible in evidence to show that the credit was extended to the defendant, and that the accounts sued on were charged to him at the time of the contract.